

**Rhodes Furniture, Inc. d/b/a Crossroads Furniture
and Robert Brock.** Case 14-CA-20360

January 31, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On July 13, 1990, Administrative Law Judge George F. McInerny issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Rhodes Furniture, Inc. d/b/a Crossroads Furniture, St. Louis, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and letter subsequent paragraphs.

“(c) Remove from its files any reference to the discharge of Robert Brock on October 2, 1989, and advise him in writing that this has been done and that no evidence of his unlawful discharge will be used as a basis for future personnel action against him in any way.”

2. Substitute the attached notice for that of the administrative law judge.

¹ In affirming the judge's finding that the Respondent discharged Robert Brock in violation of Sec. 8(a)(1) of the Act, we do not adopt his finding that the Respondent singled out Rafael Lopez-Cepero because of his exercise of protected concerted activities. We agree with the judge, however, that the credited testimony of Craig J. Crowley, concerning remarks made to him by Store Manager Ken Collier in February or March 1989, tends to show that the Respondent looked with disfavor on employees perceived to be actively involved in the exercise of protected concerted activities and therefore establishes animus that we can take into account in determining the motive for Brock's discharge. Thus, Crowley credibly testified that Collier urged him to reconsider his employment with the Respondent and criticized Crowley for allegedly influencing new employees and being a “leader” and “organizer” of employees having complaints about working conditions.

At the first paragraph of sec. II.E of his decision, the judge inadvertently found that the complaint pertained to the exercise of union activities. The complaint alleges that Brock was disciplined for the exercise of protected concerted activities.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge employees as a result of their protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer full reinstatement of Robert Brock to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges, and WE WILL make him whole for any loss of earnings and other benefits he may have suffered because of our discrimination against him, plus interest.

WE WILL remove from our files any references to the discharge of Robert Brock and notify him in writing that this has been done and that evidence of his unlawful discharge will not be used as a basis for future personnel action against him in any way.

RHODES FURNITURE, INC. D/B/A CROSS-
ROADS FURNITURE

Tina R. O'Brien, Esq. and *Robert Siegel, Esq.*, for the General Counsel.

Douglas R. Sullenberger, Esq. and *Andria T. Lure, Esq.* (*Fisher & Phillips*), of Atlanta, Georgia, for the Respondent.

Robert Brock, of Florissant, Missouri, appearing pro se.

DECISION

GEORGE F. MCINERNY, Administrative Law Judge. Based on a charge filed on October 6, 1989, by Robert Brock, an Individual, the Regional Director for Region 14 of the National Labor Relations Board, herein referred to, respectively, as the Regional Director and the Board issued a complaint on December 1, 1989, alleging that Rhodes Furniture, Inc., doing business as Crossroads Furniture (the Company or Respondent), had violated the provisions of the National Labor

Relations Act (the Act), by discharging employee Robert Brock because he engaged in activities protected under Sections 7 and 8(a)(1) of the Act. The Respondent filed a timely answer in which it denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me in St. Louis, Missouri, on March 6, 1990, at which all parties were represented, and had the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally. Following the conclusion of the hearing the General Counsel and Respondent submitted briefs, which have been carefully considered.

Based on the entire record in this case, including my observations of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and store located in Hazelwood, Missouri, where it is engaged in the retail sale of furniture. During the 12-month period ending November 30, 1989, it derived gross revenues in excess of \$500,000, and received at its Hazelwood location products, goods, and materials valued at more than \$50,000 directly from points outside the State of Missouri.

The complaint alleges, the answer admits, and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

Rhodes Furniture operates approximately 72 stores and 5 warehouses throughout the Southern and Midwestern United States, from its headquarters in Atlanta, Georgia. There are four stores in the St. Louis area, the largest being the Hazelwood store, the only location involved in this case.

The president and chief executive officer of Rhodes for 13 years has been Irwin Lowenstein.¹ Before assuming those titles Lowenstein had been senior vice president of Rhodes, in charge of the Crossroads operations.

In the fall of 1988, the Company became concerned with the pace of sales at the Hazelwood store. A new area manager, James A. Welch, was appointed.² Welch in turn decided to replace the Hazelwood store manager, Dick Marram, and transferred him to another location, bringing in a new manager, Ken Collier. At the same time Welch and Collier began implementing company programs involving additional paperwork, additional working time, and a different method of assignment of salespeople to customers, all of which were burdensome and annoying to the 18 to 22 salespeople at Hazelwood, and generated murmuring and complaints from the sale force to management during 1989. The complaints met with responses from management such as "it's company pol-

icy" or "this is the way it is going to be done," naturally leaving the matters unresolved.

B. Concerted Activities

Robert Brock had worked for the Company in the period 1981 to 1983, then left voluntarily. He returned in August 1988 after being rehired by Dick Marram. Brock, like the other salespeople, was concerned and upset by the changes which began with the arrival of Welch and Collier in November and December 1988. Indeed, Brock spent sometime beginning in August 1989 preparing a list of 24 grievances, some derived from his own experience, and others from discussions with fellow employees. This list, however, was never given to anyone from management.³ Brock did testify that he discussed grievances with other employees, and this testimony was corroborated by another salesman, Rafael Lopez-Cepero.

Brock and Lopez-Cepero both testified that they wanted to arrange a meeting between the salespeople and Irwin Lowenstein. They were put off by evasive and exculpatory responses to their grievances by local management, and they liked and trusted Lowenstein because of their long experience with him. To accomplish this, several employees met with Corporate Director of Personnel John M. Terre on August 30, 1989. The salespeople at this meeting were Gary Capechni, Rebecca McDonnell, Joannie Zimmer, Lopez-Cepero, and, arriving about 7 or 8 minutes late, Brock. These employees advised Terre that they had "formed together as a group within the sales department and they would like to meet with Irwin Lowenstein privately to address some grievances that we had."

The major grievances involved the Company's practice in handling customers, called the "up" system. This required all the salespeople working on the floor to sign up at the beginning of their shift and be assigned numbers. They were then required to greet persons coming through the door, in numerical order. Whatever happened then, whether the persons greeted by a salesperson were buyers, just lookers, browsers, or whether they came in only to make a payment on a bill or a layaway, this was the salesperson's customer, and after dealing with the person he or she would go to the bottom of the list. While the "up" system may have been designed to be fair to all the employees, since all took the same chances of encountering a bill payer or a browser walking in and out of the store, the salespeople were upset by it.

The second major problem was the increase in time spent at daily sales meetings. Meetings had been scheduled for one-half hour everyday when Brock began in August 1988, but later that year then had been lengthened to a whole hour. Since the salespeople worked on commission only, this was all uncompensated time.

There were other grievances, on scheduling, on the requirement that salespeople wear costumes or peculiar dress for special sales, as well as numerous others things compiled

¹ Late in 1988 Rhodes was taken over by the Holcomb Green organization. All of its stock was acquired by Holcomb Green and this company is now privately held. The takeover does not appear to have influenced the events in this case other than in increased pressure for sales and profits.

² I recall that this witness spelled his name "Welsch," but since the record refers to Welch, I will use that spelling throughout.

³ In August and September 1989, there was a petition filed with the Board on behalf of employees in the warehouse at the Hazelwood store. According to Brock, there were visits by management people from Atlanta to the store during this period, but none of these people were specifically identified. The petition was withdrawn, however, and no election was held. There is no evidence linking this activity with the actions of Brock and his coworkers in the same time period.

on Brock's list. The "up" system, the long meetings, and scheduling were, apparently, the most important.

At the August 30 meeting with Torre Brock came in while Lopez-Cepero and Zimmer were discussing the "up" system. Brock joined in their assertions that the system was unfair, adding that the salespeople were concerned about their jobs because of high turnover and the changes going on in the store. He testified that he then told Torre that he "had called the Labor Board on two occasions, and that we had as a group forced together and written a letter and had signed the letter."⁴ He went on to "advise Mr. Torre that—we had over 50 percent signatures on a letter, and that we wanted to meet privately with Irwin Lowenstein to express our grievances."

Lopez-Cepero's testimony was consistent with Brock's on the calls to the National Labor Relations Board and the request for the private meeting with Lowenstein. Torre agreed that they discussed grievances at the meeting, and that the employees wanted to set up a meeting with Lowenstein, but he did not recall specifically any reference to the Board. I found this last response to be equivocal and evasive. It is my view that Brock did say he had called the Board, but Torre chose not to remember this at the hearing.⁵

The meeting was, in the words of Lopez-Cepero, "cordial" and at its conclusion Torre agreed that he would try to set up a meeting between the employees and Lowenstein. However, it so happened that on the next day a meeting had been scheduled to be attended by Corporate Vice President for Operations Joel Lanham. Torre told Lanham about his meeting with the salespeople and Lanham told him he would take care of the matter. Accordingly, after the sales meeting ended on the next day, August 31, Lanham dismissed the local management people, and he conducted a grievance meeting with the salespeople. There was some spirited discussion by a number of employees, one or two of whom became excited and loud.⁶ Both Lopez-Cepero and Brock were unhappy with the way the meeting was conducted, but it went on, and at the conclusion of the meeting it appeared that the problems with the "up" system, and with the hour-long sales meetings, were solved. The "up" system was changed so that salespeople were not charged with an "up" when they encountered bill payers, and the meetings were reduced to one-half an hour.

There is no question in this record that the complaints quieted down after this meeting. Store Manager Ken Collier testified that he also took steps to correct problems in scheduling by soliciting the desires of all the salespeople on their schedules and by adjusting the schedules so that in fact, all

requests were accommodated. Welch testified that, a couple of days after the meeting he asked Brock how things were going and Brock assured him that "everything is great—We've got everything worked out—we like Ken, Ken's doing a good job."

Soon after the August 31 meeting, Brock did have an opportunity to meet with Company President Irwin Lowenstein. The latter made what he described as a "regular," "normal" visit to the store on September 6,⁷ talking to Welch, Collier, and Lanham, who was there also. As was his custom on these "regular" visits, after finishing his business with the managers, and before he had to get his flight back to Atlanta, Lowenstein made arrangements to talk privately to any employees who wished to meet with him, and to discuss problems or anything else they wanted to talk about. Brock, together with another employee, Dean Manafee, met with Lowenstein in Welch's office. According to Brock, Lowenstein began by saying that the meeting had to be quick because he had to catch a flight. He then talked about how great it was to work for this company, and asked what they thought of Collier. Brock, according to Lowenstein's version of the conversation, wanted him to know that they supported Collier and that things were going pretty well.

Brock did not deny this, but he did say that he told Lowenstein that "they were just trying to organize in the best interests of themselves, as well as the store." At that point Manafee began to talk about his own capabilities as a salesman. Lowenstein kept looking at his watch, and finally said to Brock "don't think for a moment that I don't know who the five people were in Mr. Torre's office that day, because I have their names right here," and he pointed to his briefcase. Nothing further was said, and Lowenstein left.

Lowenstein admitted that he was aware of the Torre meeting, and that he would have known who the people were who met with Torre. But when he was asked whether he made the statement attributed to him by Brock, he first said that he did not recall making such a statement, then said that if someone had asked him if he knew who met with Torre, Torre would have told him at the time. Then he said he did not make the statement, but in the same breath, said that "If that statement was made, it was made in that context."

All of this, whatever the last sentence quoted above means, indicates to me that Lowenstein did say what Brock said he did. My impression of Lowenstein was that he is an honorable man, and one to whom lying would come hard. But I think he was aware that the statement attributed to him was damaging, and in his shifting and evasive responses to his own counsel's questions, he avoided the lie, but implanted a doubt in my mind as to his candor in this matter. Thus, I believe Brock's version of the incident.

C. The September 29 Incident

On September 29, in the evening⁸ Brock was in the "up" position near the customers' entrance to the store. A woman came in and he moved forward to greet her and ask if there

⁴ A letter dated August 30, addressed to John Torre and signed by 12 people was introduced into evidence, but the record shows that this document was never given to Torre or any other representative of management. Like Brock's list of grievances, the letter is evidence of concerted activity by Brock and others, but cannot be considered as showing company knowledge of those activities.

⁵ Brock had a tendency to exaggerate, and to stray from the issues into his views and impressions of the facts. I have tried to pare away the excesses in his testimony, and, confining myself just to the facts, particularly, as here, where his version was corroborated by Lopez-Cepero, a credible witness, I find that Brock was generally a credible witness. I, therefore, credit Brock's statement that he told Torre that he had contacted the Board about the grievances, and that they had a letter with signatures of more than 50 percent of the sales force.

⁶ Two employees, Sullivan and Ford, were involved in this conduct. At the time of this hearing Sullivan was still employed and Ford had been promoted to a supervisory position.

⁷ Brock described this visit as occurring in late September, but I think his memory may have been faulty on the date. It is more probable that the date was more accurately recollected by Lowenstein's reference to his appointment diary, even though that fact was not adduced on the record.

⁸ Brock recalled the time as 5 p.m. but on cross-examination agreed that it could have been as late as 8:30.

was something to which he could direct her.⁹ As Brock explained, it was the salesperson's obligation to greet the customer and to determine "in those first few seconds" the customer's purpose in coming into the store. The "up" procedure is to ask four or five questions to see whether the customer is a legitimate prospect or whether she has come in merely to check on something she had seen in a previous visit or whether she needs to be referred to the cashier, the manager, customer service, or to another salesperson. In this instance, when Brock asked if she wanted to be directed, she replied that she was working with someone else—that she knew that that person was not there that day—and that she had no time.

If, as Brock testified, the woman was walking quickly, appeared upset, and seemed unequivocal that she did not want his help, Brock would have been wiser to let her go, and wait for his next turn in the "up" position. He did not, however, and persisted in asking for the name of the salesperson with whom the customer had talked. The woman then stopped, turned, and "yelled"¹⁰ at Brock, stating that the salesperson's name was Pam and that she, the customer, was in a hurry and that she did not have time for him. Brock then replied, as he put it "lightheartedly," "Madam, if you don't have time for me, I don't have time for you."

The customer then walked away, but soon came back with salesperson Jim Noll. According to Noll, she approached him and asked who was the salesperson with whom she had just been speaking. Noll directed her to Brock. She asked Brock for his name, and he answered that his name was Robert Brock. She asked how to spell it and he replied that his name was "Robert Brock B-R-O-C-K" and he held out his name tag which was pinned to his jacket so she could read it. Brock insisted that he remained calm in this last conversation, but Noll described Brock's tone of voice as "obnoxious." Both of these descriptions could have been correct. One can be calm but speak nevertheless in a voice heavy with sarcasm and loathing.

In any event, the customer went to the rear of the store and asked Ken Collier if she could speak with the manager. Collier identified himself as the manager. She told her story, which, according to notes made at the time by Collier and entered into evidence here, is not substantially different from the same story related by Noll and by Brock.

After Collier had talked to the customer and attempted to mollify her, she left and he called Brock into his office. He told him that they had a "big problem" and that he had a complaint that he had been rude to a customer. Brock denied that he was rude, and the matter apparently rested there for a time.

On September 30, Collier talked to Noll and obtained his version of the incident. He then conferred with Welch, and the two of them decided to discharge Brock. On October 2, at the end of his shift,¹¹ Brock was called in to Collier's office and told that Welch and Collier had determined to fire him. Brock tried to see Welch, but he was not in, then called

Torre in Atlanta. Torre apparently knew nothing about the situation, but promised that Welch would get back to Brock. This never happened.¹²

D. Company Rules and Practice

The position of the Company is clear. Brock was fired because he was rude to a customer. The General Counsel argues that despite this the Company's practice was not only not to fire salespeople for this sort of thing, but not even to discipline or warn them against such conduct.

The Company's formal rules are not much help in determining its practice in these matters. A copy of a six-page document entitled "Sale Floor Rules and Responsibilities" was placed in evidence. The rules talk about tardiness, proper maintenance of timecards, sleeping, fighting, drinking, smoking, eating, reading, false representations, and "stealing" of customers, but nowhere is rudeness specifically mentioned as a cause for reprimand, warning, or termination. In section 10, however, marked "The Customer comes first!!!," there is an example of what could be described as rudeness to a customer, followed by the statement "goodbye customer, goodbye future sales, goodbye salesperson."

If this last quoted portion of the rules was intended to show what happened to salespeople who were rude to customers it was not accurate. Brock testified that it was never the Company's practice to discharge or discipline employees for rudeness to customers. He did say that when a complaint came in, and he said he was not aware of any salesperson who had not had a complaint of some sort registered against her or him, the manager handled it, either by offering a discount to the injured party or sending a letter of apology or having the salesperson call to apologize. He recalled no one being fired on account of a customer complaint. Brock testified that after the transfer of Welch and Collier to the store, and the beginning of more serious efforts to improve sales, there was no change, nor any bulletins nor rules announcing changes in the policy respecting rudeness to customers.

Craig J. Crowley, a former salesman with 14-1/2 years experience at the store, testified about an incident in February 1988, during which he was not only rude to a customer, but grossly insulting. Rick Marram, who was the manager at that time, told Crowley not to worry and "that was it—no warning, no letter, no suspension."

Rafael Lopez-Cepero agreed with the testimony of Brock and Crowley, pointing out that very seldom did an employee even have to explain a situation involving a complaint. The worst penalty Lopez-Cepero recalled was 3-day suspension or a verbal warning.

All of this testimony was generally credible, and the Respondent presented no evidence questioning or contradicting these witnesses.¹³

If thus appears that the discharge of Brock for his rudeness to the customer on the evening of September 29 was a new method of dealing with what the credible testimony of Brock, Lopez-Cepero, and Crowley shows was a fairly com-

⁹ Brock mentioned that this customer was walking "very fast" and seemed "upset." In view of what occurred, however, I do not believe that the customer's humor is relevant to the issues.

¹⁰ The customer was later identified in the record, but she did not testify. The only other witness to the confrontation, salesperson James R. Noll, testified in basic agreement with Brock's version.

¹¹ He had also worked on September 30 and October 1 without there being any reference to the incident.

¹² I note that the Company introduced evidence that they lost a large sale because of this incident. Such evidence is really irrelevant since Brock was fired before the Company was aware of the lost sales.

¹³ The Respondent attempted to put in evidence through John Torre as to action taken against an employee at another company store. I did not permit this on the ground that the underlying documentation for such action was not available. I reaffirm that ruling.

mon and constant problem.¹⁴ Thus, I find that the Respondent's argument that Brock would have been discharged, even considering his protected concerted activity, is not substantiated by any evidence in this record.

E. Analysis and Conclusions

The General Counsel argues here that the punishment of Brock, after the Company learned that he was involved in organizing employees (at the same time that another union campaign was in progress in the warehouse), and that he had contacted the Board, was imposed because of his union activities. Two other instances were cited by the General Counsel to show the feelings of the Respondent toward concerted activities by its employees.

The first of these involved Craig Crowley in February or March 1989. After a general sales meeting, Crowley was called in to Ken Collier's office along with Frank Wentz, a national sales director for Rhodes Furniture. Collier, after some "staring" at Crowley, told him he had heard some "negative things" about him and asked if he liked his job. Collier and Wentz continued in the same vein, alleging that Crowley was influencing and counseling new people and channeling complaints from those new people to management, rather than influencing the new people to forget their complaints and become happy and productive employees. Crowley told them in effect, that what they were asking him to do was their job, and his job was not to make judgments for others about what kind of a place this was at which to work.

After some more of this, Collier and Wentz told Crowley to go home for 3 days and think about what they had said to him, and whether he liked his job there and wanted to continue to work there. Crowley left and returned 3 days later and resigned.¹⁵

The second incident involved Lopez-Cepero, who had 17 years of service with Crossroads Furniture. Lopez-Cepero testified that on October 8, the Sunday following Brock's discharge, an assistant store manager, Jim Crane, came to him and said he had a customer who was "very irate" about him. Lopez-Cepero said he did not know what it was all about, and Crane said that a customer had complained that Lopez-Cepero had been rude and acted in a "superior manner" to the customer.

About one-half hour later Crane came to Lopez-Cepero with a letter stating that Lopez-Cepero acknowledged that he had been rude to the customer and had in a superior manner. Crane asked Lopez-Cepero to sign the letter, but he refused. Lopez-Cepero was not disciplined, but, as he said "I knew right then that there was a time to leave this Company, that they were not playing right." He made up his mind to look for another job. A week later he went to work for another furniture company.

Ken Collier was present throughout this proceeding, and testified as a witness for the Respondent. He was not asked and did not testify concerning these two incidents. Nor did Collier testify about Brock's assertion that four out of the five employees who had been in the August 30 meeting with

Torre were no longer with the Company at the time of this hearing on March 9, 1990. Neither Frank Wentz nor Jim Crane testified at all.

I find that Crowley and Lopez-Cepero were credible witnesses and I believe their versions of what happened reflect what actually happened. There is indeed no dispute as to what they said about their final days with the Company.

As I have noted above, Brock was certainly engaged in concerted activities together with other employees, *Meyers Industries*, 268 NLRB 493 (1984). These activities were known to the Company through Brock's participation in the meeting with Torre, and his credited statements, at that meeting, that the employees were organized, that a majority of the salespeople had signed a letter about their grievances, and that Brock himself had had discussions with the Board.

Brock's discharge was certainly not groundless. Rudeness in a salesperson is a problem, as we all know, in retail trade. But the record here shows that there are no specific sanctions in the Company's rules for rude or churlish behavior by salespeople, and the Company's practice has been to ignore or downplay such offenses on the part of its people. The statements by the General Counsel's witnesses that the prior practice was not altered by the Collier—Welch regime stand unaltered.

Added to this, the evidence shows through the experience of Crowley and Lopez-Cepero that this Company did not look with favor on Crowley's leadership position among newer employees, nor Lopez-Cepero's participation in the Torre meeting along with Brock. No one from the Company came forward to contest these witnesses and I infer that both Crowley and Lopez-Cepero were singled out, one for a 3-day suspension and the other for some kind of a warning letter, because they, too, had engaged in concerted activities with other employees concerning conditions of employment.

The General Counsel here has established a prima facie case under the Board's decision in *Wright Line*, 251 NLRB 1083 (1980). The Respondent, as I have noted here, has not met its burden of refuting the General Counsel's case. I, therefore, find that in discharging Robert Brock the Respondent has violated Section 8(a)(1) of the Act.

IV. THE REMEDY

Having found that the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall order that it cease and desist therefrom and that it shall take certain affirmative action designed to effectuate the policies of the Act.

Having further found that the Respondent discriminatorily discharged employee Robert Brock on October 2, 1989, I shall order that the Respondent offer Robert Brock immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges. Respondent shall also make Robert Brock whole for any loss of earnings and other benefits he may have suffered as a result of the discrimination against him. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹⁶

¹⁴ Although this sort of thing was common, I would not characterize it as "insignificant" as the General Counsel so described it in her brief. I am concerned here more with the question of disparate treatment accorded to Brock because of his concerted activities.

¹⁵ He did not get paid for those 3 days, but that matter is not at issue here.

¹⁶ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).

CONCLUSIONS OF LAW

1. Respondent Rhodes Furniture, Inc. d/b/a Crossroads Furniture is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. By discharging its employee, Robert Brock, on October 2, 1989, the Respondent has violated Section 8(a)(1) of the Act.

3. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁷

ORDER

The Respondent, Rhodes Furniture, Inc. d/b/a Crossroads Furniture, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees for engaging in activities protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer employee Robert Brock immediate and full reinstatement to his former job or, if that job no longer exists,

to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

(b) Make Robert Brock whole, in the manner set forth in section IV of this decision, entitled "The Remedy," for any loss of earnings and other benefits suffered as a result of the discrimination against him.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its St. Louis, Missouri facility copies of the attached notice marked "Appendix."¹⁸ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁸ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."